

The record before the Appeals Board is the same as that considered by the Administrative Law Judge and includes the transcript of the Preliminary Hearing held April 12, 1994, together with the depositions, exhibits, and pleadings filed of record in this case.

**ISSUES**

The Administrative Law Judge granted respondent's motion to terminate temporary total disability payments based upon evidence that claimant's incapacitating symptoms from his work-related injury had ended and that claimant was, therefor, no longer temporarily totally disabled within the meaning of the statute. The compensability of the claim was not an issue at the hearing. Respondent moved to dismiss this appeal based upon claimant's failure to allege that the Administrative Law Judge exceeded his jurisdiction in entering his order.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

At this juncture of the proceedings, the Appeals Board lacks jurisdiction to review the issue of whether the Administrative Law Judge erred in terminating temporary total disability benefits. Whether the claimant suffered an accidental injury arising out of and in the course of his employment with the respondent was not an issue at Preliminary Hearing. For purposes of this appeal compensability of the claim is not in dispute. The question of whether claimant's accidental injury has continued to render him temporarily and totally unable to work at this time deals with an issue that is not one of those enumerated in K.S.A. 44-534a as jurisdictional. In addition, there is no allegation that the Administrative Law Judge exceeded his authority in making his order.

The Legislature empowered the Appeals Board under K.S.A. 44-534a to review preliminary findings pertaining to the following:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice was given or claim timely made; and,
- (4) Whether certain defenses apply.

Whether a claimant is temporarily and totally disabled is not a preliminary finding that the Appeals Board may review. Further, the Administrative Law Judge has not exceeded his jurisdiction and authority. Therefore, the Appeals Board does not have jurisdiction to review this preliminary hearing order under K.S.A. 44-551. This ruling comports with many of our earlier decisions.

If not resolved, the issue raised by claimant may be reviewed by the Appeals Board at the time of final award upon proper application.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that this appeal should be and is hereby dismissed and the Preliminary Hearing Order of Administrative Law Judge John D. Clark, dated April 12, 1994, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Calvin McMillan, Attorney at Law, Wichita, KS  
Alexander B. Mitchell, Attorney at Law, Wichita, KS  
Orvel Mason, Attorney at Law, Wichita, KS  
John D. Clark, Administrative Law Judge  
George Gomez, Director